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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 140

EDWIN K. ATWOOD, ET AL., *Petitioners,*

v.

ALICE G. K. KLEBERG, INDIVIDUALLY AND AS EXECUTRIX, ETC., ET AL., *Respondents*

BRIEF OF RESPONDENT

Humble Oil & Refining Company in Opposition

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Humble Oil & Refining Company in Opposition to Petition for Writ of Certiorari

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This respondent is interested in the mineral leases under attack by petitioners in their third and fourth questions presented in their petition and brief in support thereof. Peti-

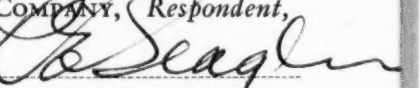
tioners ask for the cancellation of certain oil, gas and mineral leases, as well as mortgage and notes executed to this respondent by the executors and trustees of Henrietta M. King's estate. Their contention is that the executors and trustees were without authority to effectually execute such instruments under the powers granted in the will of Mrs. King. The principal complaint of petitioners is that the courts below failed to follow the decisions of the Supreme Court of Texas on the points here involved, and in this connection cite and rely upon the recent case of AVIS v. FIRST NATIONAL BANK OF WICHITA FALLS, originally decided by the Supreme Court of Texas on February 24, 1943. After petitioners filed their petition and brief in this court, the Supreme Court of Texas granted a rehearing in the AVIS case, withdrew its original opinion, and reversed the holding it had theretofore made, and in its final opinion sustained the power of the trustee to make mineral leases under the power of sale and general disposition granted to the trustee in the Avis will. It thus appears that the Supreme Court of Texas has destroyed petitioners' contentions and argument against the mineral leases here involved. A copy of the opinion of the Supreme Court of Texas on motion for rehearing in the AVIS case is set out in the appendix to the brief on behalf of respondents Alice G. K. Kleberg, et al., in opposition to the petition for writ of certiorari.

Counsel for respondents Alice G. K. Kleberg, et al., in their brief have fully answered all contentions of petitioners concerning the mineral leases under attack, and this respondent here adopts the brief of respondents Alice G. K. Kleberg, et al., filed herein, in so far as the same deals with the legal and factual points which sustain the validity of the mineral leases, mortgage and notes held by this respondent. Obviously this respondent is not affected by other issues raised by the petition for writ of certiorari.

This respondent respectfully prays that the petition be denied.

Respectfully submitted,

HUMBLE OIL & REFINING COMPANY, *Respondent*,

By 

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